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1959

# Dorothy W. Olson v. Clyde Edmonds et al : Brief of Appellant

Utah Supreme Court

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Olson and Calderwood; Attorneys for Plaintiff and Appellant;

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# In the Supreme Court of the State of Utah

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DOROTHY W. OLSON, administratrix of the Estate of Mary J. Westover, Deceased.

*Plaintiff and Appellant,*

-vs.-

CLYDE EDMONDS, WARD HOLBROOK, EDITH GARNER, NOBLE CHAMBERS, THE CACHE COUNTY DEPARTMENT OF PUBLIC WELFARE and THE STATE OF UTAH DEPARTMENT OF PUBLIC WELFARE,

*Defendants and Respondents,*

FILED

JAN 5 - 1959

Clerk, Supreme Court, Utah

BRIEF OF  
APPELLANT

Appeal No. 8975

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Appeal from the District Court of the First  
Judicial District of the State of Utah In and for  
the County of Cache

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Honorable Lewis Jones, Judge.

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OLSON and CALDERWOOD

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*Plaintiff and Appellant,*

-VS.-

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HOLBROOK, EDITH GAR-  
NER, NOBLE CHAMBERS,  
THE CACHE COUNTY DE-  
PARTMENT OF PUBLIC  
WELFARE and THE STATE  
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## INTRODUCTION

Plaintiff brought suit against the defendants to recover a sum of money which plaintiff contends defendants unlawfully withhold under the Public Assistant Act of 1947, Chapter 2, Title 55, Utah Code Annotated, 1953, (55-2-1 et seq., U. C. A., 1953).

Each of the parties filed a Motion for Summary Judgement and the District Court on the 14th day of October, 1958, granted defendants Motion for Summary

Judgement and dismissed plaintiff's complaint with prejudice and on the merits. This is an appeal from said Summary Judgement.

### STATEMENT OF FACTS

Mary J. Westovver died on the 28th day of October, 1954, and at the time of her death she owned her home in Logan City, Cache County, Utah. During her lifetime she had received Welfare assistance in the sum of \$3,275.00 pursuant to the above mentioned law, and in accordance with law had executed a Welfare lien against said home property.

A probate of her estate was commenced, with the only asset in the estate being said home property subject to the Welfare lien, and the plaintiff, Dorothy W. Olson, is the duly appointed, qualified and acting administratrix. Said property was appraised at \$4,000.00 market value.

Individual efforts were made to sell the home but no purchaser could be found, and the services of a real estate agent were obtained.

A sale was not consummated until the Fall of 1957, approximately three years after the date of decedent's death. The property was sold for \$4,000.00 and on the 16th day of August, 1957, \$1,200.00, constituting a down payment on the purchase price, was paid into the Cache County Department of Public Welfare, of which \$200.00 was paid to the real estate agent as a commission.

The estate and family of the decedent claimed the \$1,000.00 as a cash exemption pursuant to the provisions of Section 5 of the Public Assistance Act of 1947, as amended, but the defendants allowed an exemption of only \$580.00, defendants retaining the sum of \$420.00 to apply as interest on the lien. The plaintiff's complaint was the sum of \$420.00 as the balance of said \$1,000.00 cash exemption.

### STATEMENT OF POINTS

Point 1: That the District Court erred in holding that the \$1,000.00 cash exemption provided for in the Public Assistance Act of 1947, as amended, is subject to impairment by the Department of Welfare.

### ARGUMENT

The applicable provision of the Public Assistance Act of 1947, as amended by the legislature in 1953, is found in Section 55-2-5, Utah Code Annotated, 1957 Pocket Supplement (L 1953, Ch. 90, Section 2).

Sub-section (1) (a) of said law makes provision for the execution of a lien on the real property of a recipient of old age assistance. Said law then provides that:

*“All such real property, including but not limited to joint tenancy interests, shall from the time of recording of such agreement be and become charged with a lien for all assistance received by the recipient \* \* \*.”*

(Italics ours).

Sub-section (2) then goes on to say :

“At the time of the settlement of a lien given in accordance with Section 55-2-5, (1), paragraph (a), there shall be a cash exemption of \$1,000.00 to be deducted from the market value of such property \* \* \*.”

Plaintiff's claim is based upon the plain wording of the statute, that the property of the recipient of old age assistance is charged with a lien only for the assistance rendered, and that at the time of settlement, there shall be a cash exemption of \$1,000.00.

Plaintiff is unable to find in any of the provisions of the law anything whatsoever which gives to the State Welfare Department any leeway, option or discretion to reduce or modify in any way this cash exemption.

The defendants in claiming they have the power or right to reduce the exemption by administrative fiat apparently rely on the provisions of Sub-section (3) of 55-2-5 which provides that if the heirs are unable to make a lump sum settlement of the lien at the time it becomes due and payable, the State Department may permit settlement based upon periodic payments in a manner prescribed by the State Department in the interest at the rate of 6 percent per annum to be charged beginning 90 days after the lien become due and payable (page 18, 1957 Pocket Supplement to Volume 6 of the Utah Code Annotated).

However, we see nothing whatsoever in the statute

which allows the Welfare Department to deduct said interest from the specific cash exemption of \$1,000.00 provided for by law.

We have been unable to find any case which is in point on this particular controversy nor can we find any legislative history on it, but appears to us that the plain intention of the legislature was to give a specific cash exemption in order to defray the expense of last illness, funeral expenses and those matters which always come up at the time of a death of a person. The need for such an exemption is just as great in a case where the heirs are unable to make a prompt cash settlement as it is in cases where the Welfare lien can be paid off forthwith immediately following the death of the recipient or within said 90 day limitation.

In this case, all sorts of efforts were made to dispose of the only property available in the estate to pay off the lien. No purchaser could be found for a considerable length of time, even after the services of a real estate agent were obtained.

It seems apparent that if the legislature intended to penalize the estate of a recipient who was unable to discharge the lien within 90 days by withholding from such an estate the benefits of the specific exemption, that they would have done so in plain language.

One other factor in the law substantiates plaintiff's position that the \$1,000.00 exemption is not subject to



diminishment. In the provision concerning interest (the second paragraph on page 18 of the 1957 Pocket Supplement for Volume 6, Utah Code) it is provided that:

“If the heirs are unable to make a lump sum settlement of the lien at the time it becomes due and payable, the State Department may permit settlement based upon periodic repayments in a manner prescribed by the State Department.” (Italics ours).

Referring back to the exemption provision, the law specifically states that the \$1,000.00 exemption shall be given at the time of *settlement*. (Italics ours).

It appears clear from the entire reading of the statute that the \$1,000.00 exemption is to be allowed at the time of settlement, irregardless of when the settlement takes place.

## CONCLUSION

We do not deny the right of the Welfare Department to charge interest on deferred payments, but it is our position that all payments to the Welfare Department, whether of interest or principal, must come out of what money or assets exist after allowing a \$1,000.00 exemption.

Respectfully submitted,

OLSON & CALDERWOOD

By CHARLES P. OLSON

Attorney for Plaintiff and Appellant